

SUPPORT FOR THE AMENDMENTS

Support for the amendment of Claim 13 is found on page 2, lines 5-9, and page 3, lines 3-4, in the specification.

Claims 15 and 16 are herein canceled.

Claim 17 is new and is supported on page 3, lines 24-33, and page 5, lines 13-15, in the specification.

Claim 18 is new and is supported by Claim 12.

Claim 19 is new and is supported on page 4, lines 4-7, in the specification.

Claim 20 is new and is supported by Claim 14.

Claim 21 is new and is supported on page 3, lines 24-33, page 4, lines 1-6, and page 5, lines 13-15, in the specification.

Claims 22 and 23 are new and are supported by Claim 12 and on page 4, lines 4-7, in the specification.

Claim 24 is new and is supported by Claim 14.

Claim 25 is new and is supported on page 3, lines 24-33, page 4, lines 1-6, and page 5, lines 13-15, in the specification.

Claims 26 and 27 are new and are supported by Claim 12 and on page 4, lines 4-7, in the specification.

Claim 28 is new and is supported by Claim 14.

No new matter is believed added to this application by entry of this amendment.

Upon entry of this amendment, Claims 11-14 and 17-28 will be active.

REMARKS/ARGUMENTS

The claimed invention provides a fluid dispensing container as described in independent Claims 13, 17, 21 and 25, and claims dependent thereon, and methods for

preparing the respective fluid dispensing container according to Claims 13,17, 21 and 25.

The claimed fluid dispensing container is simple in production, does not contain a pressurized gas, and yet provides the dispensing performance of an aerosol system. The low vapor pressure provided in the sealed container by the low-boiling liquid prevents formation of a vacuum in the container when the mixture is dispensed by the pump. This low vapor pressure serves to compensate for the volume of product dispensed and to rebalance the pressure inside the container to a value equivalent to atmospheric pressure. No such container is disclosed or suggested in the cited references.

The rejection of Claims 11, 12, 13, 14 and 16 under 35 U.S.C. 102(b) over Nakajima et al. (GB 1,537,436) is respectfully traversed.

Nakajima describes an airtight vessel which is pressurized with a gas (Claim 1). All the examples in Table 1 describe a pressurized air-tight vessel containing from 2.0 to 15.0 % by weight of a pressurized gas. Applicants respectfully submit that nowhere does this reference disclose or suggest a fluid dispensing container where the container is not pressurized with a gas.

Nakajima clearly describes (page 2, lines 22-24):

Referring now to Figures 1 and 2 a mounting cap 101 is air-tightly fixed to the opening of an air-tight vessel 2 **filled with a pressurized gas** of a low pressure of up to 2 Kg/cm² as measured at 33°C . . . (Bold added for emphasis)

The reference actually states (page 4, lines 23 to 31) the importance of pressurizing the container as follows:

(2) Since the air-tight vessel is employed, a volatile content can be filled, and the spraying device can be used in the same manner as an aerosol-type spraying device and a similar effect or condition can be attained.

(3) Spraying is accomplished by the synergistic action of the mechanical pressurization of the piston and the pressure of the content per se.

The Office has acknowledged that Nakajima teaches an air-tight vessel in which a low **pressure gas is preliminarily filled so as to facilitate maintenance of a low pressure in the atmosphere in the interior of the air-tight vessel** (Official Action dated June 3, 2009, page 4, lines 15-19).

Applicants have described the disadvantage of a sealed container having a pressurized gas on page 2, lines 24-30, in the specification.

Moreover, the use of a gas within a sealed vessel implies the fact that the pressure within such vessel can undergo strong variations depending on the temperature changes which the vessel is exposed to: said pressure variations affect the functionality of the pump which can therefore deliver different doses of the product or even leak . . .

In contrast, according to the present invention a fluid dispensing container is charged by adding the contents to a container as a liquid and no gas pressurization is employed. After the liquid mixture (low-boiling liquid and fluid to be dispensed) are placed in the container, the pump is mounted and sealed without adding any pressurized gas to effect pressurization. The contents of the container are charged to an open container at normal atmospheric pressure. The advantages of the claimed invention include: 1) risk of fluid leakage is avoided; 2) charging the container is a simple operation; and 3) temperature fluctuation in internal pressure is minimized.

Applicants again respectfully call the Examiner's attention to *In re Arkley*, 455 F.2d 586, 587, 172 USPQ 524, 526 (CCPA 1972) which states:

“[R]ejections under 35 U.S.C. 102 are proper only when the claimed subject matter is identically disclosed or described in “the prior art.” Thus for the instant rejection under 35 U.S.C. [102(b)] to have been proper, the . . . reference must clearly and unequivocally disclose the claimed [subject matter] or direct those skilled in the art to the [subject matter] . . .”

In view of the foregoing, Applicants respectfully submit that the cited reference does not meet the Arkley test and therefore cannot anticipate the claimed invention. The cited

reference actually teaches that a pressurized gas is required. In all the examples of the cited reference, a propellant gas such as tetrafluordichloroethane, isobutene or carbon dioxide is used. Nakajima describes that spraying is assisted by the pressure developed inside the container due to the presence of a pressurized gas (page 4, lines 26-31). Accordingly Applicants respectfully submit that this reference cannot render the claimed invention obvious, and withdrawal of the rejection of Claims 11, 12, 13, 14 and 16 under 35 U.S.C. 102(b) over Nakajima is respectfully requested.

The rejection of Claim 15 under 35 U.S.C. 103(a) over Nakajima in view of Marelli (U.S. 2003/0150880) is moot in view of the cancellation of Claim 15 herein.

The provisional rejection of Claims 11-16 on the ground of nonstatutory obviousness-type double patenting over copending U.S. Application 11/418,253 in view of Nakajima is respectfully traversed.

Applicants have previously described that Nakajima employs an air tight vessel in which the atmosphere is maintained at a low pressure by a pressurized gas (See also page 2, lines 15-20 of present specification). The Office has alleged that it would have been obvious to prepare the fluid dispensing container of Nakajima equipped with the fluid dispensing unit of copending U.S. Application 11/418,253. However, such combination would not lead to the present invention because Nakajima requires filling the air-tight vessel with a pressurized gas, as described above.

Applicants respectfully call the Examiner's attention to the following excerpt from the Office's own discussion of **"Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in *KSR International Co. v. Teleflex Inc.*"**

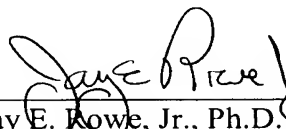
“The rationale to support a conclusion that the claim would have been obvious is that **all the claimed elements were known in the prior art** and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded nothing more than predictable results to one of ordinary skill in the art at the time of the invention. “[I]t can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.” **If any of these findings cannot be made, then this rationale cannot be used to support a conclusion that the claim would have been obvious to one of ordinary skill in the art,**” (Federal Register, Vol. 72, No. 195, page 57529) **(Bold added)** (Citations omitted)

In view of Nakajima’s description of filling the air-tight container with a pressurized gas, in contrast to the description of the present invention that the fluid dispensing container does not comprise a pressurized gas, Applicants respectfully submit that conclusion of obviousness cannot be supported. The reference clearly does not describe all the elements of the claimed invention. Accordingly, withdrawal of the provisional rejection of Claims 11-16 on the ground of nonstatutory obviousness-type double patenting over copending U.S. Application 11/418,253 in view of Nakajima is respectfully requested.

Applicants respectfully submit that the above-identified application is now in condition for allowance and early notice of such action is earnestly solicited.

Respectfully submitted,

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